

**CIVIL SERVICE COMMISSION MINUTES
SEPTEMBER 5, 2007**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

Francesca Krauel
W. Dale Bailey
Cheryl Fisher
A.Y. Casillas
Barry I. Newman

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
William D. Smith, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

**Approved
Civil Service Commission
October 3, 2007**

1:30 P.M. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

COMMENTS: Motion by Newman to approve all items not held for discussion; seconded by Bailey. Carried.

B. Commissioner Fisher: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) **Michael
Peabody**, Road Maintenance Worker, appealing an Order of
Suspension and Charges from the Department of Public
Works.

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CONFIRMATION OF ASSIGNMENTS

2. Commissioner Casillas: Julie Buechler, Esq., on behalf of **2007-14**, appealing an Order from the Sheriff's Department.

Confirmed.

3. Commissioner Bailey: Tasha Iglesias, Worksite Organizer, SEIU Local 221, on behalf of **Alberto Rios Garcia**, former Food Services Worker, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

4. Commissioner Bailey: Tasha Iglesias, Worksite Organizer, SEIU Local 221, on behalf of **Humberto Bahena**, former Food Services Worker, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

DISCIPLINE

Findings

5. Commissioner Casillas: Fern Steiner, Esq., on behalf of **Michael Porter**, Social Worker I, appealing a Final Order to Demote and Charges (from Senior Protective Services Worker) from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Michael Porter (Employee), from a written Final Order to Demote and Charges demoting him from his class and position of Senior Protective Services Worker (SPSW) (Class No. 5254) to the class and position of Social Worker I (SW I) (Class No. 5235) in the Health and Human Services Agency (HHSA) was presented to the Civil Service Commission. The Commission appointed A. Y. Casillas, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil

Service Commission. Thereafter, the matter was duly noticed and came on for hearing on June 29, 2007.

Appellant Michael Porter was a SPSW in the North Coastal branch of the Children's Welfare Services Division of HHSA. He was assigned to the Emergency Response Unit. In the Final Order to Demote and Charges, he was charged with incompetency, negligence, inefficiency, insubordination and

conduct unbecoming an officer or employee of the County. As a result of the charges, he was demoted to the classification of SW I. The demotion bypassed several intermediate classification levels and places him in the entry level classification of the Social Worker series. HHSA's objective with the demotion was to place Employee in a classification without investigative responsibilities. HHSA determined that he failed and refused to follow HHSA policy and fundamental good practice in performing case investigations. It determined that any investigative tasks performed by Employee subjected children to a significant risk of harm. Any demotion to a classification above the SW I classification would have left him with some investigative responsibilities, thereby risking harm to children. HHSA had conducted an extensive Performance Improvement Plan (PIP) and numerous counseling sessions with Employee without significant improvement. At the Commission hearing, HHSA proved all of the causes of action and most of the charges. It is therefore recommended that the Final Order to Demote be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Bailey. Carried

Commissioner Newman stated that he would vote against the motion because he disagrees with the level of discipline imposed. He stated that he felt that this employee should not be employed with the County of San Diego, especially in the sensitive area of health and human services.

Commissioner Bailey stated that he would vote for the motion, even though he agrees with Commissioner Newman's statement above.

AYES:	KRAUEL, BAILEY, CASILLAS
NOES:	FISHER, NEWMAN
ABSTENTIONS:	NONE
ABSENT:	NONE

6. Commissioner Fisher: **Michael Peabody**, Road Maintenance Worker, appealing an Order of Suspension and Charges from the Department of Public Works.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Michael Peabody (Employee), from a written Order of Suspension and Charges suspending him from his class and position of Road Maintenance Worker (RMW) (Class No. 6023) for a period of two eight-hour days in the Department of Public Works (DPW) was presented to the Civil Service Commission. The Commission appointed Cheryl Fisher, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on July 12, 2007.

Appellant Michael Peabody is a RMW in the DPW. He is appealing a two-day suspension as the result of being charged with negligence and insubordination in connection with an incident in which he made contact with overhead utility lines while operating a County dump truck. At the Commission hearing, the DPW proved that Employee failed to follow safety procedures. The incident was the second of its kind in a period of 18 months. The discipline is consistent with DPW's written policy for such incidents. It is therefore recommended that the Order of Suspension and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Fisher to approve findings and recommendations; seconded by Bailey. Carried.

DISCRIMINATION

Complaints

7. **Milton Jeffries**, Equipment Operator, alleging retaliation, age and racial discrimination by the Department of Public Works.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Fisher assigned.

8. **Trayvone Broadway**, former Stock Clerk, alleging age, race and non-job-related factor (dress code) discrimination by the Sheriff's Department.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Newman assigned.

9. **Zadok Othniel**, Park Ranger, alleging retaliation discrimination by the Department of Parks and Recreation.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Krauel assigned.

10. **Deborah Thomas**, Deputy District Attorney III, alleging retaliation discrimination by the Office of the District Attorney.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Casillas assigned.

11. **Earnest Davis**, Associate Air Pollution Control Engineer, alleging retaliation and racial discrimination by the Air Pollution Control District.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Bailey assigned.

12. **Mario Perez**, applicant, alleging disability discrimination by the Department of Human Resources. (See Item No. 19 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Newman assigned.

13. **Gloria Rudolph**, Administrative Analyst II, alleging retaliation, age and non-job related factor (hostile work environment) discrimination by the Probation Department.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Fisher assigned.

Findings

14. Commissioner Bailey: Dennis J. Hayes, Esq., on behalf of **Linda Brown**, Deputy Public Defender IV, alleging retaliation and gender discrimination by the Office of the Public Defender.

Prior to the reading of the Findings and Recommendations, Sr. Deputy County Counsel, William Songer, addressed the Commission. He stated that the report does not talk about the promotion process but reports on decades of rumors and innuendo which have no bearing on the Department's actions. Mr. Songer stated that on behalf of the Department, he feels that the OIA report is a disservice to the process.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 7, 2007, the Commission appointed W. Dale Bailey to investigate the complaint submitted by Dennis J. Hayes, Esq., on behalf of Linda Brown, which alleged gender discrimination and retaliation by the Office of the Public Defender. The matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. This Investigating Officer has taken into consideration all of the documentation submitted in this matter. The report of OIA, transmitted to the Civil Service Commission office on July 27, 2007, has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report. It is therefore recommended that Ms. Brown's discrimination complaint be pursued as to gender discrimination and the matter proceed under the provisions of Civil Service Rule VI; that a hearing officer be assigned to conduct the Rule VI hearing; that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding that there is sufficient evidence to warrant conducting a hearing.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas. Bailey assigned.

Commissioner Newman comments: "I was less impressed with these OIA reports [Agenda Items 14, 15, 16 and 17]

than I have been with others. I will vote for the motion because I think our practice has been fairly well established and I think it is a legitimate practice. But in this one I have some reservations. It will not change my vote; I will vote for it."

AYES:	BAILEY, FISHER, CASILLAS, NEWMAN
NOES:	NONE
ABSTENTIONS:	NONE
ABSENT:	NONE
NOT PARTICIPATING:	KRAUEL

15. Commissioner Bailey: Dennis J. Hayes, Esq., on behalf of **Susan Clemens**, Deputy Public Defender IV, alleging gender discrimination by the Office of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 7, 2007, the Commission appointed W. Dale Bailey to investigate the complaint submitted by Dennis J. Hayes, Esq., on behalf of Susan Clemens, which alleged gender discrimination by the Office of the Public Defender. The matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. This Investigating Officer has taken into consideration all of the documentation submitted in this matter. The report of OIA, transmitted to the Civil Service Commission office on July 27, 2007, has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report. It is therefore recommended that Ms. Clemens' discrimination complaint be pursued and the matter proceed under the provisions of Civil Service Rule VI; that a hearing officer be assigned to conduct the Rule VI hearing; that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding that there is sufficient evidence to warrant conducting a hearing.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas. Bailey assigned.

See Commissioner Newman's comments in Agenda Item No. 14, above.

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AYES: BAILEY, FISHER, CASILLAS, NEWMAN
NOES: NONE
ABSTENTIONS: NONE
ABSENT: NONE
NOT PARTICIPATING: KRAUEL

16. Commissioner Bailey: Dennis J. Hayes, Esq., on behalf of **DawnElla Gilzean**, Deputy Public Defender IV, alleging gender discrimination by the Office of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 7, 2007, the Commission appointed W. Dale Bailey to investigate the complaint submitted by Dennis J. Hayes, Esq., on behalf of DawnElla Gilzean, which alleged gender discrimination by the Office of the Public Defender. The matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. This Investigating Officer has taken into consideration all of the documentation submitted in this matter. The report of OIA, transmitted to the Civil Service Commission office on July 27, 2007, has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report. It is therefore recommended that Ms. Gilzean's discrimination complaint be pursued and the matter proceed under the provisions of Civil Service Rule VI; that a hearing officer be assigned to conduct the Rule VI hearing; that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding that there is sufficient evidence to warrant conducting a hearing.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas. Bailey assigned.

See Commissioner Newman's comments in Agenda Item No. 14, above.

AYES: BAILEY, FISHER, CASILLAS, NEWMAN
NOES: NONE
ABSTENTIONS: NONE
ABSENT: NONE
NOT PARTICIPATING: KRAUEL

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17. Commissioner Bailey: Dennis J. Hayes, Esq., on behalf of **Barbara McDonald**, Deputy Public Defender IV, alleging gender and age discrimination by the Office of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 7, 2007, the Commission appointed W. Dale Bailey to investigate the complaint submitted by Dennis J. Hayes, Esq., on behalf of Barbara McDonald, which alleged gender and age discrimination by the Office of the Public Defender. The matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. This Investigating Officer has taken into consideration all of the documentation submitted in this matter. The report of OIA, transmitted to the Civil Service Commission office on July 27, 2007, has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report. It is therefore recommended that Ms. McDonald's discrimination complaint be pursued as to gender discrimination and the matter proceed under the provisions of Civil Service Rule VI; that a hearing officer be assigned to conduct the Rule VI hearing; that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding that there is sufficient evidence to warrant conducting a hearing.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas. Bailey assigned.

See Commissioner Newman's comments in Agenda Item No. 14, above.

AYES:	BAILEY, FISHER, CASILLAS, NEWMAN
NOES:	NONE
ABSTENTIONS:	NONE
ABSENT:	NONE
NOT PARTICIPATING:	KRAUEL

SELECTION PROCESS

Appeals

18. **Cynthia Ropp-Richter**, Administrative Analyst II, Health and Human Services Agency, appealing her non-selection for the classification of Housing Program Analyst I by the Department of Housing and Community Development.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

19. **Mario Perez**, applicant, appealing the Department of Human Resources' determination that permanent limitations resulting from his pre-employment physical examination cannot be accommodated for the classification of Deputy Sheriff Cadet-Detentions/Court Services. (See Item No. 12 above.)

RECOMMENDATION: Hold request for Rule X in abeyance pending resolution of discrimination matter.

Staff recommendation approved.

20. **Sandra Richardson**, applicant, appealing her non-selection for the classification of Healthcare Agency Housekeeper by the Health and Human Services Agency.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

Findings

21. Commissioner Bailey: **Susan McInerney**, Deputy Public Defender III, appealing her non-selection for the classification of Deputy Public Defender IV by the Office of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 7, 2007, the Commission assigned Commissioner Barry I. Newman to conduct a hearing on the appeal of Susan McInerney regarding her non-selection for the classification of Deputy Public Defender IV by the Public Defender. Due to scheduling conflicts, this hearing was reassigned to Commissioner W. Dale Bailey. A hearing was conducted pursuant to Section 10.4 of the Civil Service Rules of the County of San Diego and all testimony was taken under oath and the proceedings were recorded. All evidence was thoroughly considered.

Appellant Susan McInerney (Employee) is a Deputy Public Defender III (DPD III) in the Department of the Public Defender (Department). She is appealing a Department selection process in which she was an unsuccessful candidate for a promotion to Deputy Public Defender IV (DPD IV). The process at issue culminated in the promotion of 20 Deputy

Public Defenders from level III to level IV in November 2006. Employee was one of 43 candidates who were certified eligible for the promotion by the Department of Human Resources. In her appeal, Employee contended that the selection process was defective as to her because: 1) It was subjective due to favoritism and bias against her unit; 2) Her interview was conducted differently from the interviews of other candidates; 3) The scoring of the interviews was mathematically flawed; and 4) The decision not to promote was due to gender discrimination and retaliation for a sexual harassment complaint she filed.

At the Commission hearing, Employee failed to prove that the Department's decision to exclude her from the promotion was due to any defect in the selection process. The Department's efforts raised some concerns which could have been minimized had it used a less cumbersome scoring system and told the candidates exactly what the selection process would consist of prior to its implementation. However, there was no prejudice to Employee. Therefore, it is recommended that Employee's appeal be denied; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Bailey to approve Findings and Recommendations; seconded by Newman. Carried.

AYES:	BAILEY, FISHER, CASILLAS, NEWMAN
NOES:	NONE
ABSTENTIONS:	NONE
ABSENT:	NONE
NOT PARTICIPATING:	KRAUEL

22. **Brandon Thomas**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

23. **Alan Campagna**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

24. **Sam Knight**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

RECOMMENDATION: Ratify Item Nos. 22 - 24. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 21-24 ratified.

OTHER MATTERS

Extension of Temporary Appointments

25. Health and Human Services Agency

2 Residential Care Worker Trainees (Anastacia Hare, Alfreeda Deal)

1 Residential Care Worker I (Rose Addison)

1 Residential Care Worker II (Jennifer Dodds)

RECOMMENDATION: Ratify.

Item No. 25 ratified.

26. Selection Process Briefing: **Carlos Arauz**, Director, Department of Human Resources.

This item was heard at the beginning of this Agenda.

Carlos Arauz, Director of DHR, gave a comprehensive overview of the Selection Process as it pertains to DHR and as well as County departments.

INFORMATION

27. Julie Buechler, Esq., on behalf of **2007-12**, withdrawal of two Orders from the Sheriff's Department. (Commissioner Krauel)

Withdrawn.

28. Public Input.

ADJOURNED: 4:15 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

OCTOBER 3, 2007